IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 8262 OF 2005

Sangrul Shikshan Sanstha
Sangrul & Ors. . .. Petitioners.

vs.

Shri Vasant Sadashiv
Khade & Ors. .. Respondents.

Mr. N.V. Bandiwadekar for petitioners.
Mr. S.J. Ghogare for respondent no.1.
Mr. R.M. Patne, AGP. for R. No. 3.

CORAM : S.U. KAMDAR, J.
DATE : 6th December, 2005.

P.C.:

. By the present writ petition the order passed by the Charity Commissioner on Exhibit 21 dated 14.10.2005 is challenged. The respondents had filed an application for framing a scheme under S. 50A of the Bombay Public Trust Act. The said application being Exhibit 21 was challenged inter alia on the ground that the Charity Commissioner has no power to alter or sanction a anew scheme in view of the existing scheme already in operation. In

that view of the matter, an application was made for dismissing the application preferred by the respondent for settlement of the new scheme. The learned counsel for the petitioner has in support of the aforesaid submission relied on Section 50A (1) of the said Act. Section 50A. of the said Act reads as under :

> "50A. Power of Charity Commissioner to frame, amalgamate or modify schemes.
>
> (1) Notwithstanding anything contained in section 50, where the Charity Commissioner has reason to believe that, in the interest of the proper management or administration of a public trust, a scheme should be settled for it, or where two or more persons having interest in a public trust make an application to him in writing in the prescribed manner that, in the interest of the proper management or administration of a public trust, a scheme should be settled for it, the Charity Commissioner may, if, after giving the trustees of such trust due opportunity to be heard, he is satisfied that it is necessary or expedient so to do, frame a scheme for the management or administration of such public trust.

(2) Where the Charity Commissioner is of opinion that in the interest of the proper management or administration, two or more public trusts may be amalgamated by framing a common scheme for the same, he may, after --

(a) publishing a note in the Official Gazette [and also if necessary in any newspaper which in the opinion of the Charity Commissioner is best calculated to bring to the notice of persons likely to be interested in the trust] with a wide circulation in the region ink which the trust is registered, and

(b) giving the trustees of such trusts and all other interested persons due opportunity to be heard,

frame a common scheme for the same.

(3) the Charity Commissioner may, at any time, after hearing the trustees, modify the scheme framed by him under sub-section (1) or sub-section (2).

> (4) The scheme framed under sub-section (1) or sub-section (2) or modified under sub-section (3) shall, subject to the decision of the competent court under section 72, have effect as a scheme settled or altered, as the case may be, under a decree of a Court under section 50].

The learned counsel has also relied upon the judgment of the learned Single Judge of the Aurangabad Bench of this Court in the case of Mallikarjun Basvanappa Masute & Anr. vs. Dattatray Krushnath Wadane & Ors., reported in 2005 Vol. 107 (2) Bom. L.R. 406. On plain reading of Section 50A and particularly sub sections (3) and (4) thereof it is clear that there is a power in the Charity Commissioner to prepare or settle a new scheme even if there exists a scheme if in his opinion it is in the interest of the trust that the new scheme be prepared and sanctioned by the Charity Commissioner. Even the judgment of the learned Single Judge relied upon by the petitioner is also on the basis that there is such a power in the Charity Commissioner. However, in that case the Court on facts had come to the conclusion that there is no ground made out that the existing scheme is insufficient or needs any alteration. In that view of the matter the application initiated for sanction of the new scheme was dismissed on the ground that

the application is totally misconceived and not maintainable. In the present case petitioners are seeking to dismiss the application without going into merits thereof on the ground of jurisdiction i.e. the provisions of Section 50A of the Act do not apply where there exists a scheme. In my opinion the submissions are contrary to provisions of Section 50A. In fact the said section permits and empower the Charity Commissioner to alter the existing scheme or frame a new scheme. Thus, the order passed by the Charity Commissioner is valid in law and does not require any interference under Article 227 of the Constitution of India. Petition fails and thus dismissed. No order as to costs.